



Memorandum

TO: COYOTE VALLEY SPECIFIC
PLAN TASK FORCE

FROM: Stephen M. Haase

SUBJECT: AGRICULTURAL LAND
CONVERSION AND MITIGATION

DATE: January 4, 2006

BACKGROUND

The conversion of prime agricultural farmland to urban land uses has been a long-standing issue in Santa Clara County and the City of San Jose. Prime soils, which have the ability to produce common cultivated crops without deterioration over a long period of time, underlie most of San Jose. The San Jose 2020 General Plan, and its predecessors going back to 1975, acknowledges that the preservation of all prime soil land would mean a virtual halt to urbanization and is not a reasonable goal. However, the stated goal is to “avoid the premature conversion of agricultural land to urban uses”. The policies of the General Plan, such as the Urban Reserve Land Use/Transportation Diagram designation, have protected such lands until the appropriate time for development.

Under CEQA, a project may be considered to have a significant environmental effect if it will result in the loss of prime farmland. The EIRs prepared by the City as the lead agency over the past decade, such as the adoption of the San Jose 2020 General Plan, the Coyote Valley Research Park, Moitozo Ranch Residential Project and McKean Road Sports Complex to name a few, have all identified the loss of the prime farm lands in the respective areas. The practice of the City has been to conclude that the impact was significant and unavoidable in that there were no feasible mitigation measures to reduce the impact to a less than significant level.

In conjunction with several very large pending projects, review of recent CEQA case law and awareness of the changing practices by other cities around the state, the Director of Planning, as the City’s CEQA administrator, has reviewed the City’s practice regarding the conversion of agricultural land to non-agricultural uses for possible update. Staff has also reassessed the feasibility of various mitigation measures utilized in other communities and their respective ability to reduce the level of significance for agricultural land conversions.

ANALYSIS

Agricultural land or farmland as used in this memorandum is defined by the California Environmental Quality Act (CEQA) as those lands that are designated “Prime”, “Unique Farmland”, and lands of “Statewide and Local Importance” by the State Department of Conservation as shown on their latest “Important Farmland Map”. This also includes land that has been used for agriculture, but has not been irrigated for six years, or are as defined by the California State Farmland Mapping Program.

CEQA was enacted to ensure that information on the potential impacts of a proposed project is identified for the decisions maker and the public and to help implement mitigations that would lessen the impacts of the project. In this manner, CEQA plays an important role in the preservation of agricultural land by ensuring that significant effects on the environment of agricultural land conversions are qualitatively and consistently considered in the environmental review process. CEQA requires the avoidance and/or minimization of significant impacts when those impacts can be feasibly mitigated. When it is unclear whether a mitigation measure will actually reduce a project’s impacts to less than significant, the Lead Agency is not precluded from adopting such a measure. So long as the Lead Agency adopts a statement of overriding considerations, its determination usually will not be set-aside in a court challenge.

CEQA provides the City with a substantial amount of authority and discretion, and is intended for use in conjunction with powers granted by other laws. CEQA supplements the City’s land use approval powers by authorizing the City to use its discretionary powers to mitigate or avoid significant effects on the environment, when it is feasible to do so, with respect to projects subject to the City’s powers. The City, as a lead agency acting in conformance with the CEQA statutes makes the decision of when to require an EIR, establish thresholds of significance, determine levels of impact significance, determine the feasibility of mitigation measures, and approve projects despite significant unmitigated environmental effects.

Title 21 of the San Jose Municipal Code (Environmental Clearance) implements the provisions of the California Environmental Quality Act (CEQA) and the CEQA guidelines. This title designates the Director of Planning as responsible for environmental clearance in the City of San Jose under this title and CEQA. The Director of Planning is responsible for the identification of projects with potentially significant environmental impacts and the decision to require an EIR.

City of San Jose’s Current CEQA Practice

The current policy of the City of San Jose is to consider the loss of agricultural land a significant unavoidable impact, which cannot be mitigated. The City has approved projects despite this significant effect without any requirement to provide any mitigation for the conversion of agricultural land. The loss of agricultural land cannot reasonably be considered replaced by simply protecting other existing agricultural land, regardless of the mechanism employed

(agricultural easements or outright fee title purchase). While securing the on-going use of existing agricultural at a particular ratio may protect those lands from future conversion, this does not offset the net reduction of the loss of agricultural land by replacing the land lost to urban development. Other jurisdictions utilize this same line of thinking, which the courts have upheld practice in both published and unpublished cases.

The vast majority of San Jose's land designated as "Prime", "Unique", or farmland of "Statewide Importance" by the State Department of Conservation is located in Coyote Valley, and to a much lesser extent in the South Almaden Valley and Evergreen. Another primary reason the City does not (and has not) require mitigation for the loss of agricultural land is due to the fact that the majority of those converted lands have been located on small, isolated infill sites surrounded by urban development. Therefore, the long-term agricultural viability of those lands was not considered high. The large projects currently pending, particularly Coyote Valley and to a lesser extent Evergreen have a long history of agricultural operations and uses. This uniqueness warrants reconsideration of how the City's environmental review process treats the conversion of agricultural land.

Staff's preliminary estimate for the amount of agricultural land Citywide is approximately 3,540 acres. Of these 3,540 acres of agricultural land citywide, approximately 525 acres have existing entitlements but remain undeveloped, 295 acres are owned by the Santa Clara County Parks and the State Department of Parks and Recreation (former Lester property), 345 acres are located in the South Almaden Valley Urban Reserve, and approximately 2,330 acres are located in Coyote Valley (see map). In some cases there are parcels of land that are not being actively used and would be considered fallow. Properties that are under existing agricultural production, or are vacant, and meet the definition of an agricultural property generally range from approximately 300 acres to less than 5 acre lots.

Defining the Level of Significance

CEQA encourages each a public (lead) agency to adopt thresholds of significance to be used in the determination of the significance of environmental effects of projects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular effect, non-compliance with which means the effect will normally be determined to be significant by the agency and the compliance with which means the effect will normally be determined to be less than significant.

Staff intends to use the California Agricultural Land Evaluation and Site Assessment Model (LESA) of 1997 to assess impacts of agriculture and farmland. The Land Evaluation and Site Assessment (LESA) criteria were initially developed by the U.S. Natural Resources Conservation Service, which the State Department of Conservation used to formulate a state model LESA system. This model is intended by CEQA to provide lead agencies with a standardized methodology to ensure that significant effects on the environment of agricultural

land conversions are quantitatively and consistently considered in the environmental review process.

The LESA Model uses six different factors to rate the significance of the proposed land conversions. Two factors (Land Evaluation) are based upon measures of soil resource quality and the other four factors (Site Assessment) measure thresholds based on the project size, water resource availability, surrounding agricultural lands, and the amount of protected resource lands surrounding the project site/area. These factors are rated separately on a 100-point scale and subsequently weighted relative to one another and combined, resulting in a single numeric score with a maximum attainable score of 100 points. This overall score is what is the basis for making a determination of the project's potential significance related to land conversion.

The LESA Model thresholds are dependant upon the attainment of a minimum score for the Land Evaluation and the Site Assessment factors. Both factors are weighted equally (50/50) so that no single subscore can heavily skew the final results. The model establishes scoring thresholds for determining significance when a project would convert agricultural land to non-agricultural uses. A score greater than 39.0 points would be automatically considered significant by the model. However, it is important to note that the adopted San Jose 2020 General Plan goal is to avoid the "premature" conversion of agricultural lands.

Based on a preliminary citywide assessment, the conversion of approximately 3,540 acres of agricultural land would be forecasted as a potentially significant impact. Staff intends to use the LESA model as a quantitative indicator tool, but also consider other relevant factors on a case-by-case basis. Staff will regard projects scoring less than 39 points to be exempt for purposes of agricultural land conversion and require no further analysis or review. For this reason, small infill projects would not have a potentially significant impact and be considered otherwise exempt. Other relevant qualitative factors, such as the existence of surrounding protected farmlands, will be considered for projects scoring 39 points or higher prior to making a final impact significance determination.

Those projects that exceed the threshold of significance would be required to prepare an EIR. For these projects, staff would impose a specified amount (ratio to be determined) of mitigation to partially minimize or reduce the potentially significant impact, due to the loss of agricultural land. However, this mitigation measure would not be considered feasible to actually lessen or avoid the potentially significant impact to a less than significant level. Therefore, the approval of projects with significant agricultural land conversion impacts would require the City Council to identify how the expected project benefits outweigh the policy of reducing or avoiding the significant conversion of agricultural land by the proposed project.

Other Jurisdictional Policies/Practices

Staff has conducted a survey of some northern California cities to obtain information regarding an appropriate amount of mitigation to require. Staff identified the mitigation policies of the

Cities of Gilroy, Livermore, Davis, and Fairfield as potential benchmarks to determine a mitigation policy and/or agricultural preservation policy for the loss of agricultural land in San Jose. The communities surveyed are in various stages of growth and have various goals related to the type of growth that they envision in each community. These Cities were chosen based on their reputation of being agriculturally based communities which are experiencing, or have experienced, pressures to convert their supply of agricultural land to nonagricultural uses. They share some common landscapes and urban surrounding with San Jose.

Findings of the survey are described below. Although the following jurisdictions provide for and require mitigation when converting agricultural land to a non-agricultural use, the environmental clearance documents for such projects make no findings that the mitigation reduces the impact of conversion to a less than significant level.

- City of Gilroy Agriculture Mitigation– The City of Gilroy is currently requiring a 1:1 ratio and/or an in-lieu fee for lands converted from agricultural use or zoning to a nonagricultural use. The in-lieu fee is currently based upon the lowest appraisal of purchasing development rights. The City of Gilroy also allows for a developer to purchase development rights at a 1:1 ratio on agricultural land and transfer of ownership of those rights to the Open Space Authority or other City approved agency.
- City of Livermore Agriculture Mitigation– The City of Livermore is requiring the planting of new agricultural land at a 1:1 ratio and/or an in-lieu fee per new dwelling unit (approximately \$40k per unit/acre) for agricultural land converted to a nonagricultural land in the South Livermore area. Additionally, the developers are required to arrange for the maintenance of the new agricultural planting for a period of at least eight years. This mitigation policy applies to approximately 1,900 acres located in the South Livermore area allowing for development of up to 481 acres accommodating 1,200 housing units. The South Livermore Valley Agricultural Land Trust was formed to assist in the negotiation and purchase of these mitigation easements and hold jointly with the City of Livermore.
- City of Davis Agriculture Mitigation– The City of Davis is requiring a 2:1 ratio and/or an in-lieu fee based on a per capita formula similar to a typical parkland dedication requirement. The City of Davis additionally passed Measure O in 2000. Measure O is a special tax for an annual \$24 tax per household to pay for open space acquisition. Measure O is not considered a “mitigation measure” but rather a pro-active approach by the City to maintain a sufficient amount of open space either as agriculture and/or habitat areas for wildlife (“banking”). According to the City, the tax revenue generated from Measure O is expected to produce approximately \$17.5 million over the next 30 years.
- City of Fairfield Agriculture Mitigation– The City of Fairfield requires mitigation at a 1:1 ratio. The City of Fairfield also established an initial Mello-Roos (Capital Facilities District) in 1995, which requires a fee of \$80 per dwelling unit with no inflation adjustment. Additional Mello-Roos (CFDs) have been incorporated which have accounted for allowing

increases (inflation rate) to address raising land costs. These new Mello-Roos fees are currently up to \$120.00 per dwelling unit. The Mello-Roos tax is not considered a special assessment, and therefore there is no requirement that the tax be apportioned on the basis of property benefit.

Next Steps

For the appropriate next steps, staff has identified as a priority the need to engage in discussions with appropriate stakeholders to determine potentially feasible mitigation measures for incorporation into projects that would lessen, but not reduce to a less than significant level, significant impacts to agricultural lands. The measures to be discussed could include acquisition of agricultural conservation easements or land in fee, mitigation ratios, identification of acceptable techniques for implementation (fee acquisition, easements, etc.), methods for the provision for long term agricultural use and management, locating an adequate supply of mitigation land, and so forth. If an in-lieu fee was proposed to be established, a nexus study would be required prior to implementing such a proposal.

Agricultural conservation easements, purchased as a mitigation requirement, should ideally be purchased or maintained within the Santa Clara County boundaries in order to preserve and protect the remaining agricultural resources in our county, which are subject to strong development interests. Agricultural mitigation land should be counted towards the fulfillment of multiple mitigation requirements, such as open space preservation, habitat conservation, storm water quality and flood control if the lands being preserved allow the appropriate applicable criteria to be met.

A mitigation requirement that includes the purchase of agricultural conservation easements or farmland in fee-title would require the effective management of these lands. Effective management would involve the protection and sustaining of these lands in perpetuity, through an Acquisition and Implementation Management Plan. An Acquisition and Implementation Management Plan would be prepared as part of any Mitigation Monitoring and Reporting Program.

PUBLIC OUTREACH

A key next step is to engage in a public discussion with property owners with lands that appear to qualify under the screening of prime agricultural lands conducted by staff. The meetings would cover the use of the LESA model, the initial results of the model, and the ability for owners to provide information on their property that might modify the results of the LESA model and to discuss potential measures that might lessen impacts to agricultural land conversion from developing their property.

Discussions would also include the environmental and open space community. At a recent CVSP environmental focus group meeting a representative from the Committee for Green Foothills presented options for addressing conversion of agricultural lands in Coyote Valley (see attached letter). Other such letters, which addressed agricultural issues, were submitted in response to the CVSP EIR Notice of Preparation and are attached for your review.



STEPHEN M. HAASE, DIRECTOR
Planning, Building and Code Enforcement

Attachments:

1. Potential Agricultural Land Conversion Map
2. LAFCO NOP Letter
3. Department of Conservation NOP Letter
4. Committee for Green Foothills Letter (2)
5. Greenbelt Alliance NOP Letter

AGRICULTURAL LAND MITIGATION STRATEGY OPTIONS

1. *“No Change” Strategy Option I* - Strategy I represents no change in current City policy and would continue to take the approach that it is infeasible to mitigate the loss of *agricultural land* conversion. Under this approach no mitigation would be required and the loss of *agricultural land* would be considered a significant and unavoidable environmental impact.

2. *Strategy Option II* – An argument could be made that the preservation of farmland outside of the developed CVSP area is feasible. The second strategy involves developing certain preservation and other mitigation measures that are considered feasible, and concluding that the loss of *agricultural land*, although significant, would be reduced to a level that is less than significant with mitigation. Mitigation measures could include preserving *agricultural lands* within the greenbelt at a ratio less than 1:1, preservation of some *agricultural land* within the developed area, and measures for the management of the preserves.

3. *Strategy Option III* - This alternative strategy would involve adopting the mitigation measures in Strategy II as feasible measures, but would conclude that even with the adoption of these measures, the impact would be significant and unavoidable.

4. *Strategy Option IV* –This alternative strategy would provide for the preservation of agricultural land at a ratio of 1 acre: 1 acre, or something more than 1:1, but nevertheless would treat the impact as significant and unavoidable. This alternative appears to most appropriately assess the level of significance, as well as attaining mitigation at a ratio of 1:1 or greater. This option would be the most expensive. This option would require findings for a Statement of Overriding Consideration.

SUMMARY TABLE 1
MITIGATION OPTIONS FOR AGRICULTURAL CONVERSION

OPTION	MITIGATION	REDUCE SIGNIFICANCE	ADOPT OVERRIDING CONSIDERATIONS
I	None	No, significant unavoidable	Yes
II	Yes (less than 1:1)	Yes, less than significant	No
III	Yes (less than 1:1)	No, significant unavoidable	Yes
IV	Yes (greater than 1:1)	No, significant unavoidable	Yes

Potential Agricultural Land Conversion in San Jose

